

000373

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE)56
10/21

TO:

CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):

DEVELOPMENT SERVICES

3. DATE:

September 10, 2008

4. ECT:

Nancy Ridge Business Park, Project No. 114358

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)

Tim Daly (619) 446-5356, MS-501

6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)

Laura Black (619) 446-5112, MS-501

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED



8. COMPLETE FOR ACCOUNTING PURPOSES

FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.	1317				No cost to the City. All costs are recovered through a deposit account funded by the applicant.
ORGANIZATION	1776				
OBJECT ACCOUNT	4022				
JOB ORDER	427003				
C.I.P. NUMBER	N/A				
AMOUNT					

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	KELLY BROUGHTON	9/11/08	8	DEPUTY CHIEF	WILLIAM ANDERSON	9/15/08
2	EAS	MARTHA BLAKE	9/11/08	9	COO		
3	CPCI/PLANNING			10	CITY ATTORNEY		
4	CFO			11	ORIG. DEPT	MIKE WESTLAKE	9/11/08
5				DOCKET COORD: _____ COUNCIL LIAISON _____			
				<input checked="" type="checkbox"/> COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: _____			

11. PREPARATION OF:

☒ RESOLUTIONS☒ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

1) Council resolution certifying that the information contained in Project No. 114358 has been completed in compliance with the California Environmental Quality Act and State CEQA Guidelines, and that said Mitigated Negative Declaration No. 114358 reflects the independent judgement of the City of San Diego as Lead Agency, stating for the record that the final Mitigated Negative Declaration has been reviewed and considered prior to approving the project, certifying the final Mitigated Negative Declaration and adopting the Mitigation, Monitoring, and Reporting Program.

2) Council resolution approving the Planned Development Permit No. 385298 and Site Development Permit No. 385300.

3) Council ordinance adopting rezone of 13.95 acres from AR-1-1 to IL-2-1

11A. STAFF RECOMMENDATIONS:

Approve Resolutions and adopt Ordinance.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): 5

COMMUNITY AREA(S): Mira Mesa

ENVIRONMENTAL IMPACT: The City of San Diego as Lead Agency under CEQA has prepared and completed a Mitigated Negative Declaration, Project No. 114358, dated June 24, 2008 and Mitigation, Monitoring, and Reporting Program covering this activity.

CITY CLERK INSTRUCTIONS:

1. Public noticing is required.

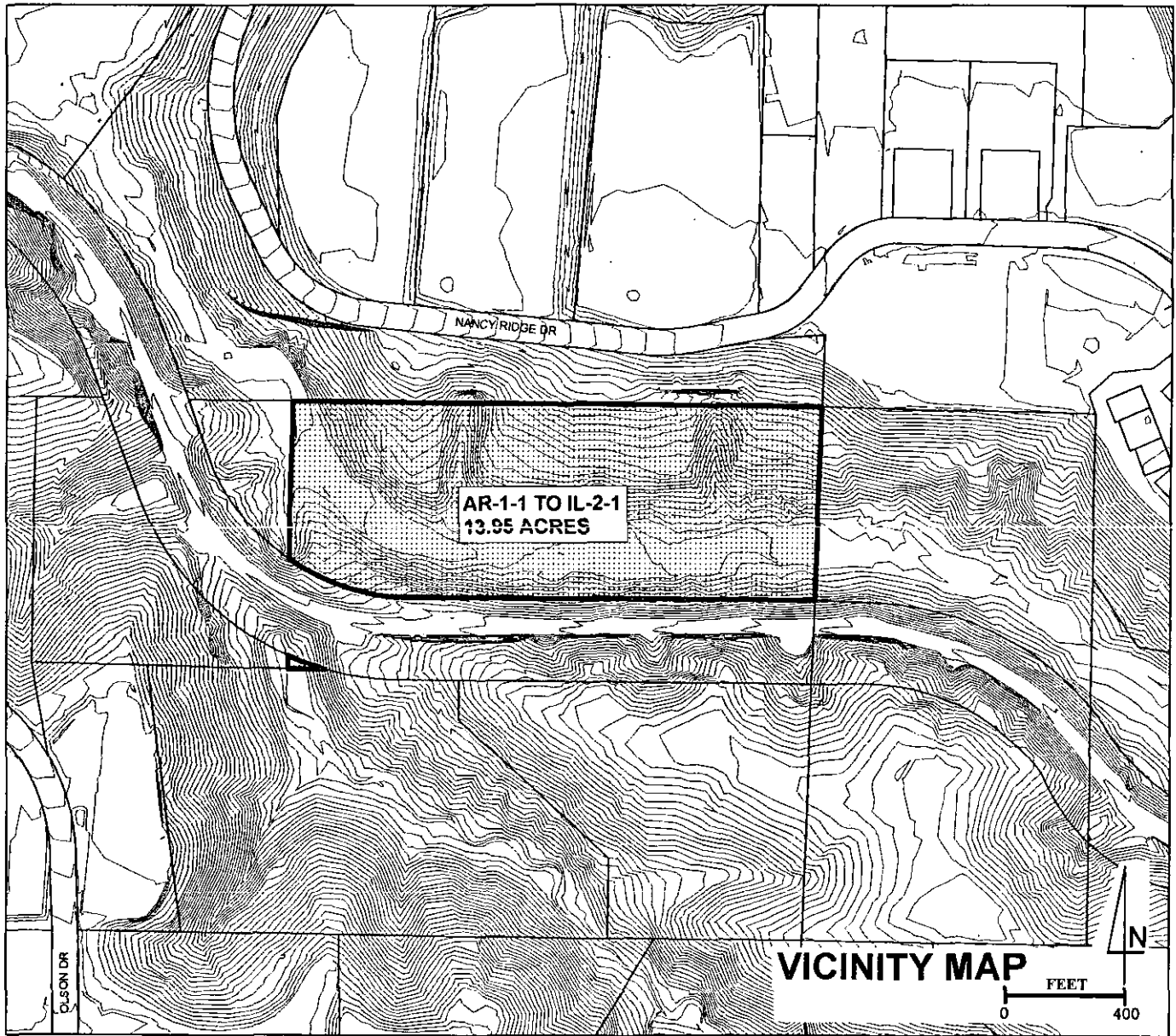
Return copies of each resolution, ordinance, and permit to Tim Daly, MS-501.

3. Council action requires a majority vote.

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CITY OF SAN DIEGO • DEVELOPMENT SERVICES
PROPOSED REZONING



Sec. 9-T15S-R3W-POR

ORDINANCE NO. _____
 EFF. DATE ORD. _____
 ZONING SUBJ. TO _____
 BEFORE DATE _____
 EFF. DATE ZONING _____
 MAP NAME AND NO. _____

REQUEST IL-2-1
 PLANNING COMM. RECOMMENDATION **APPROVE**
 CITY COUNCIL ACTION

CASE NO. **PTS114358**

[Signature]
 DEVELOPMENT SERVICES MANAGER

B- 4263

APN: 343-010-21

(258-1701) 04-15-08 ldj

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO REZONING 13.95 ACRES LOCATED WITHIN THE MIRA MESA COMMUNITY PLAN AREA FROM THE AR-1-1 ZONE TO THE IL-2-1 ZONE, AS DEFINED BY SAN DIEGO MUNICIPAL CODE SECTION 131.0603 AND REPEALING ORDINANCE NO. 18451 (NEW SERIES), ADOPTED DECEMBER 9, 1997, OF THE ORDINANCES OF THE CITY OF SAN DIEGO INsofar AS THE SAME CONFLICTS HERewith.

This ordinance approves the rezoning of 13.95 acres from the AR-1-1 zone into the IL-2-1 zone, in connection with property located at south of 5909 Nancy Ridge Drive, and legally described as north half of the southeast quarter of the northeast quarter, in Section 9, township 15 South, Range 3 West, San Bernardino Base Meridian, in the Mira Mesa Community Plan, in the City of San Diego, California.

This ordinance contains a notice that a full reading of this ordinance is dispensed with prior to its final passage, since a written or printed copy will be available to the City Council and the public a day prior to its final passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

A complete copy of the Ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

NMF:mm
10/03/08
Or.Dept:DSD
O-2009-40
MMS#6764

000379

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO REZONING 13.95 ACRES LOCATED WITHIN THE MIRA MESA COMMUNITY PLAN AREA FROM THE AR-1-1 ZONE TO THE IL-2-1 ZONE, AS DEFINED BY SAN DIEGO MUNICIPAL CODE SECTION 131.0603 AND REPEALING ORDINANCE NO. 18451 (NEW SERIES), ADOPTED DECEMBER 9, 1997, OF THE ORDINANCES OF THE CITY OF SAN DIEGO INsofar AS THE SAME CONFLICTS HERewith.

WHEREAS, on October 11, 2006, Nancy Ridge Business Park, LLC., submitted an application to the City of San Diego for a Site Development Permit, Planned Development Permit, Multi-Habitat Planning Area boundary line adjustment, and a Rezone from the AR-1-1 zone to the IL-2-1 zone for the Nancy Ridge Business Park Project No. 114358; and

WHEREAS, on July 17, 2008, the Planning Commission of the City of San Diego considered Rezone No. 387102 for the Nancy Ridge Business Park Project No. 114358, and pursuant to Resolution No. 4426-PC voted to recommend City Council approval of the Rezone; and

WHEREAS, The City Council may approve a zoning or rezoning action whenever public necessity or convenience, the general welfare, or good zoning practice justifies this action; NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That 13.95 acres, located south of 5909 Nancy Ridge Drive, and legally described as north half of the southeast quarter of the northeast quarter, in Section 9, Township

15 South, Range 3 West, San Bernardino Base Meridian, in the City of San Diego, County of San Diego, State of California (APN 343-010-21); in the Mira Mesa Community Plan area, in the City of San Diego, California, as shown on Zone Map Drawing No. B-4263, filed in the office of the City Clerk as Document No. OO-_____, are rezoned from the AR-1-1 zone into the IL-2-1 zone, described and defined by San Diego Municipal Code Chapter 13, Article 1, Division 6. This action amends the Official Zoning Map adopted by Resolution R-301263 on February 28, 2006.

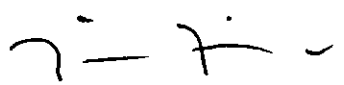
Section 2. That Ordinance No. 18451 (New Series), adopted December 9, 1997, of the ordinances of the City of San Diego is repealed insofar as the same conflicts with the rezoned uses of the land.

Section 3. That a full reading of this ordinance is dispensed with prior to passage, since a written copy was made available to the City Council and the public a day prior to passage.

Section 4. This ordinance shall take effect and be in force on the thirtieth day from and after its final passage, and no building permits for development inconsistent with the provisions of this ordinance shall be issued unless application therefor was made prior to the date of adoption of this ordinance.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Nina M. Fain
Deputy City Attorney

NMF:mm

10/03/08

Or.Dept:DSD

O-2009-40

MMS#6764

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO GRANTING SITE DEVELOPMENT PERMIT NO. 385300, PLANNED DEVELOPMENT PERMIT NO. 395298, AND MULTI-HABITAT PLANNING AREA BOUNDARY LINE ADJUSTMENT FOR THE NANCY RIDGE BUSINESS PARK PROJECT NO. 114358.

WHEREAS, Nancy Ridge Business Park, LLC, and Caryon Properties, LLC, Owners/Permittees, filed an application with the City of San Diego for a Site Development Permit [SDP], Planned Development Permit [PDP] , and a Multi-Habitat Planning Area [MHPA] boundary line adjustment to construct two step-down, flat pads for outdoor storage use to be known as the Nancy Ridge Business Park project [Project], located at 5909 Nancy Ridge Drive, and legally described as the north half of the southeast quarter of the northeast quarter, in Section 9, Township 15 South, Range 3 West, San Bernardino Base Meridian, in the City of San Diego, County of San Diego, State of California (APN 343-010-21); and Lot 107 of Lusk Industrial Park Unit No. 4, Map 10819 (APN 343-010-31), in the Mira Mesa Community Plan area, in the AR-1-1 zone, which is proposed to be rezoned to the IL-2-1 zone; and

WHEREAS, on July 17, 2008, the Planning Commission of the City of San Diego considered SDP No. 385300, PDP No. 385298, and the MHPA boundary line adjustment, and pursuant to Resolution No. 4426-PC voted to recommend City Council approval of the permits and boundary line adjustment; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter required the City Council to act as a quasi-judicial body, a public

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hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on _____, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to SDP No. 385300, PDP No. 385298, and the MHPA boundary line adjustment:

A. **SITE DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE [SDMC] SECTION 126.0504**

1. **Findings For All Site Development Permits**

a. **The proposed development will not adversely affect the applicable land use plan.** The Mira Mesa Community Plan [MMCP] designates the Project site for Open Space and Light Industrial uses. The area to be graded for the proposed storage use is entirely within the portion of the site designated for Light Industrial use and does not encroach into the area designated for Open Space. The Light Industrial area allows for manufacturing, storage, warehousing, distribution, and similar uses under the MMCP. The proposed use and the rezone from AR-1-1 to IL-2-1 to allow the open storage area is consistent with the MMCP's Light Industrial land use designation; therefore, the proposed development will not adversely affect the applicable land use plan.

b. **The proposed development will not be detrimental to the public health, safety, and welfare.** The Project site is located at 5909 Nancy Ridge Drive and the adjacent parcel to the south. The proposed on-site grading would create pads for outdoor storage and an access driveway on portions of the 25.79-acre site. The Project permits include conditions to assure compliance with City, regional, state, and federal regulations that prevent detrimental impacts to public health, safety, and welfare. The proposed development meets or exceeds all established guidelines or requirements for fire safety access, storm water runoff control, driveway and grading configurations, and all other requirements for public health, safety, or welfare.

c. **The proposed development will comply with the applicable regulations of the Land Development Code.** The proposed on-site grading would create outdoor storage pads and an access driveway and would comply with the applicable regulations of the proposed IL-2-1 zone, with the exception of retaining wall height. The SDMC limits retaining wall height to 12 feet and the Project proposes a 31 foot plantable, keystone retaining wall. Development of the property shall meet all development regulations and criteria of the IL-2-1 zone, except as specifically allowed and modified by the PDP No. 385298 which permits flexibility from strict adherence to base zone regulations where it will result in a more desirable project. Specific conditions written into PDP No. 385298 would require continued compliance with all relevant City regulations in effect for this site. All relevant regulations shall be complied with at all times for the life of the project, except as allowed through specific deviations.

2. **Supplemental Findings – Environmentally Sensitive Lands**

a. **The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands.** The Project site is located at 5909 Nancy Ridge Drive and the adjacent parcel to the south. The proposed on-site grading would create pads for outdoor storage and an access driveway on portions of the 25.79-acre site. The project site consists of two parcels located below Nancy Ridge Drive on south and west facing slopes. Both parcels contain moderate to steep slopes with elevations ranging from approximately 200 feet to approximately 280 feet Above Mean Sea Level. The northern parcel (APN 343-010-31) totals approximately 11.8 acres, and fronts a portion of Nancy Ridge Drive which extends from a point approximately 150 feet south of the Carroll Canyon Road/Nancy Ridge Drive intersection and continues south around a bend turning eastward for a total of approximately 0.48 miles. The southern parcel (APN 343-010-21) totals approximately 13.99 acres, and has no street frontage. Both parcels contain Environmentally Sensitive Lands due to Steep Hillides and Sensitive Biological Resources, are located partially within the City's Multiple Species Conservation Plan [MSCP] Subarea Plan Multi-Habitat Planning Area [MHPA], and contain wetlands.

Based upon the site topography and the location of the parcels, the Project was designed to limit overall grading quantities so that only 23.8 percent of the site would be developed where 25 percent is allowable. The Project design would also limit impacts to sensitive biological resources and result in a net gain of 4.36 acres of MHPA lands through the proposed MHPA boundary line adjustment.

b. **The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards.** The Project site is located at 5909 Nancy Ridge Drive and the adjacent parcel to the south. The proposed on-site grading would create pads for outdoor storage and an access driveway on portions of the

25.79-acre site. The proposed project, by utilizing plantable, keystone type retaining walls, will minimize the alteration of the natural land forms that might otherwise be reconfigured if fill slopes were to be utilized in lieu of the keystone walls. Additionally, by utilizing plantable retaining walls in lieu of fill slopes, the project improvements will not encroach into the flood plain and thus will minimize the effects of erosional forces and flood hazards. There will be no structures on site thereby minimizing any potential for a fire hazard.

c. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands. The Project site is located at 5909 Nancy Ridge Drive and the adjacent parcel to the south. The proposed on-site grading would create pads for outdoor storage and an access driveway on portions of the 25.79-acre site. Based upon the site topography and the location of the parcels, the Project was designed to limit overall grading quantities so that only 23.8 percent of the site would be developed where 25 percent is allowable. The Project design would also limit impacts to sensitive biological resources and result in a net gain of 4.36 acres of MHPA lands through the proposed MHPA boundary line adjustment. Additionally, all proposed development would occur outside of wetland areas and maintain a minimum 100-foot buffer. Potential indirect impacts occurring from drainage and sedimentation during construction would be mitigated through compliance with the MSCP Land Use Adjacency Guidelines and construction, post-construction and permanent Best Management Practices [BMP] maintenance consistent with the approved Water Quality Technical Report. All wetland areas would be protected on-site.

The proposed development would use plantable keystone type retaining walls in lieu of fill slopes. There will be substantially less encroachment into environmentally sensitive lands by the proposed development on this site or adjacent environmentally sensitive lands.

d. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program [MSCP] Subarea Plan. The Project site is located at 5909 Nancy Ridge Drive and the adjacent parcel to the south. The proposed on-site grading would create pads for outdoor storage and an access driveway on portions of the 25.79-acre site. The proposed development would be consistent with the MHPA preserve boundary and result in a net increase of 4.36 acres of MHPA lands through the MHPA boundary line adjustment. By minimizing that portion of the site to be developed and restricting the remaining portion of the site's use as open space only, the proposed development conforms to the MSCP Subarea plan.

e. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply. The Project site is located at 5909 Nancy Ridge Drive and the adjacent parcel to the south. The proposed on-site grading would create pads for outdoor storage and an access driveway on portions of the 25.79-acre site. The proposed project is located

several miles inland and, therefore, would not contribute to the erosion of public beaches nor would it impact the local shoreline sand supply. Runoff from the site would be directed to the graded pad areas, and primary filtering of storm water runoff would be achieved through catch basins on each pad level equipped with Kristar filter inserts, which would be discharged through rip rap dissipaters to the canyon area below the site. In addition, the site is designed with the use of keystone type retaining walls which will keep the development footprint out of that portion of the site subject to erosive conditions.

f. **The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.** The Project site is located at 5909 Nancy Ridge Drive and the adjacent parcel to the south. The proposed on-site grading would create pads for outdoor storage and an access driveway on portions of the 25.79-acre site. A Mitigated Negative Declaration [MND] was prepared for the proposed Project and the associated Mitigation, Monitoring and Reporting Program has been incorporated into the development permit conditions to fully mitigate all potentially significant negative environmental impacts that may result from the proposed development.

R. PLANNED DEVELOPMENT PERMIT – SDMC SECTION 126.0604

1. **The proposed development will not adversely affect the applicable land use plan.** The project site is designated for Open Space and Light Industrial uses by the MMCP. The area to be graded for the proposed storage use occurs entirely within the portion of the site designated Light Industrial and does not encroach into the area designated Open Space. The Light Industrial designation is intended for manufacturing, storage, warehousing, distribution and similar uses. The proposed use and the rezone from AR-1-1 to IL-2-1 to allow the open storage area is consistent with the MMCP's Light Industrial land use designation and therefore, the proposed development will not adversely affect the applicable land use plan.

2. **The proposed development will not be detrimental to the public health, safety, and welfare.** The Project site is located at 5909 Nancy Ridge Drive and the adjacent parcel to the south. The proposed on-site grading would create pads for outdoor storage and an access driveway on portions of the 25.79-acre site. The Project permits contain conditions for compliance City, regional, state, and federal regulations to prevent detrimental impacts to public health, safety and welfare. The proposed Project meets or exceeds all established guidelines or requirements concerning fire safety access, storm water runoff control, driveway and grading configurations, and all other requirements for public health, safety, or welfare.

3. **The proposed development will comply with the regulations of the Land Development Code.** The proposed on-site grading to create an access

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driveway and graded pads for outdoor storage use complies with the applicable regulations of the proposed IL-2-1 zone, with the exception of retaining wall height. The project is proposing a maximum 31-foot high retaining wall where the maximum height is 12-feet.

Specific conditions of approval require the continued compliance with all relevant regulations of the City of San Diego effective for this site and have been incorporated as conditions into PDP No. 385298. Development of the property shall meet all requirements of the regulations and development criteria of the IL-2-1 zone, except as specifically allowed and modified by PDP No. 385298 which allows for flexibility from the strict application of the regulations because this Project achieves the purpose and intent of the land use plan and is preferable to what would be achieved by strict conformance with the regulations. Therefore, with the approval of the PDP No. 385298 all relevant regulations would be complied with at all times for the life of the project, and as allowed through the deviation for the 31-foot height of the retaining wall.

4. The proposed development, when considered as a whole, will be beneficial to the community The Project site located at 5909 Nancy Ridge Drive and the adjacent parcel to the south. The proposed on-site grading would create pads for outdoor storage and an access driveway on portions of the 25.79-acre site. The proposed development will be beneficial to the community because it will provide local businesses in the area a nearby place to store their products, equipment, and/or inventory in lieu of more remote locations thereby lessening the impact to the environment resulting from trucks and vehicles on congested roadways in the area and the increased savings of non-renewable resources such as gasoline.

5. Any proposed deviations pursuant to Section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone. Development of the property shall meet all requirements of the regulations and development criteria of the IL-2-1 zone, except as specifically allowed and modified by Planned Development Permit No. 385298 which provides flexibility from the strict adherence to the maximum retaining wall height limit because the higher plantable key stone design will result in a more desirable project.

The Planned Development Permit regulations allow for deviations from the base zone or development regulations that exceed limited deviations allowed under Chapter 14 of the SDMC if the proposed design is an imaginative and creative solution that is preferable to the design that would result from the strict application of the regulations. The Project would include an outdoor storage facility which minimizes impacts to environmentally sensitive lands and steep hillsides resulting from grading by constructing a series of plantable keystone retaining walls that are sensitive to adjacent properties. Therefore, the proposed Project design would be a preferable creative and imaginative design and the deviation in retaining wall height is allowable through the Planned

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Development Permit regulations. The development's concept plans for the Project comply with all other development criteria in effect for the site.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that SDP No.385300, PDP No.385298, and the MHPA boundary line adjustment is granted to Nancy Ridge Business Park, LLC, Owner/Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 7-7
Nina M. Fain
Deputy City Attorney

NMF:mm
10/03/08
Or.Dept:DSD
R-2009-294
MMS#6764

000389

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES DEPARTMENT
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER 42-7003

SITE DEVELOPMENT PERMIT NO. 385300
PLANNED DEVELOPMENT PERMIT NO. 385298
MULTI-HABITAT PLANNING AREA BOUNDARY LINE ADJUSTMENT
NANCY RIDGE BUSINESS PARK [MMRP] - PROJECT NO. 114358

CITY COUNCIL

Site Development Permit No. 385300 and Planned Development Permit No. 385298 are granted by the City Council of the City of San Diego to Nancy Ridge Business Park, LLC, and Caryon Properties, LLC, Owners/Permittees, pursuant to San Diego Municipal Code [SDMC] sections 126.0502 and 126.0602. The 25.79-acre site is located at 5909 Nancy Ridge Drive in the AR-1-1, (IL-2-1 proposed rezone), Airport Environs, Accident Potential Zone 1, MCAS Airport Influence Area, Brush Management, Multiple Habitat Planning Area, Floodplain Zone "A," Community Plan Implementation Zone "B," and Residential Tandem Parking zones of the Mira Mesa Community Plan area. The project site is legally described as the north half of the southeast quarter of the northeast quarter, in Section 9, Township 15 South, Range 3 West, San Bernardino Base Meridian, in the City of San Diego, County of San Diego, State of California (APN 343-010-21); and Lot 107 of Lusk Industrial Park Unit No. 4, Map 10819 (APN 343-010-31).

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to construct two graded level pads for outdoor storage use only and an access road on two parcel lots, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated _____, on file in the Development Services Department.

The project shall include:

- a. Site grading, drainage structures, and retaining walls to create an access driveway and two graded pads with 4 inches thick of Class 2 base cap for an outdoor storage area;

- b. A deviation is being granted to allow a retaining wall ranging in height from 12'-0" to a maximum of 31'-0" outside of required setbacks, as shown on Exhibit "A;"
- c. Landscaping (planting, irrigation and landscape related improvements); and
- d. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six months after the date on which all rights of appeal have expired. Failure to utilize and maintain utilization of this permit as described in the SDMC will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in affect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the City Manager.
4. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.
5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

7. In accordance with authorization granted to the City of San Diego from the United States Fish and Wildlife Service [USFWS] pursuant to Section 10(a) of the ESA and by the California Department of Fish and Game [CDFG] pursuant to Fish and Game Code section 2835 as part of the Multiple Species Conservation Program [MSCP], the City of San Diego through the issuance of this Permit hereby confers upon Owner/Permittee the status of Third Party Beneficiary as provided for in Section 17 of the City of San Diego Implementing Agreement [IA], executed on July 16, 1997, and on file in the Office of the City Clerk as Document No. OO 18394. Third Party Beneficiary status is conferred upon Owner/Permittee by the City: (1) to grant Owner/Permittee the legal standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this Permit and the IA, and (2) to assure Owner/Permittee that no existing mitigation obligation imposed by the City of San Diego pursuant to this Permit shall be altered in the future by the City of San Diego, USFWS, or CDFG, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon Owner/Permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this Permit and of full satisfaction by Owner/Permittee of mitigation obligations required by this Permit, as described in accordance with Section 17.1D of the IA.

8. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

9. Construction plans shall be in substantial conformity to Exhibit "A." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.

10. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. The holder of this Permit shall comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

11. The applicant shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify applicant of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, applicant shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and applicant regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the applicant shall not be required to pay or perform any settlement unless such settlement is approved by applicant.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

12. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program [MMRP]. These MMRP conditions are incorporated into the permits by reference or authorization for the project

13. The mitigation measures specified in the MMRP, and outlined in Mitigated Negative Declaration No. 114358, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

14. The Owner/Permittee shall comply with the MMRP as specified in Mitigated Negative Declaration No. 114358, satisfactory to the City Manager and the City Engineer. Prior to issuance of the first grading permit, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

Land Use
Biological Resources
Paleontological Resources

15. Prior to issuance of any construction permit, the Owner/Permittee shall pay the Long Term Monitoring Fee in accordance with the Development Services Fee Schedule to cover the City's costs associated with implementation of permit compliance monitoring.

ENGINEERING REQUIREMENTS:

16. Prior to the issuance of any construction permit, the Owner/Permittee shall enter into a Maintenance Agreement for the ongoing permanent Best Management Practices [BMP] maintenance, satisfactory to the City Engineer.

17. Prior to the issuance of any construction permit, the Owner/Permittee shall incorporate any construction BMP's necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the Municipal Code, into the construction plans or specifications.

18. Prior to the issuance of any construction permit the Owner/Permittee shall incorporate and show the type and location of all post construction BMP's on the final construction drawings, consistent with the approved Water Quality Technical Report.

19. The drainage system for this project shall be private and is subject to approval by the City Engineer.

20. Prior to the issuance of any building permits, the Owner/Permittee shall obtain a bonded grading permit for the grading proposed for this project. All grading shall conform to requirements in accordance with the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

21. Development of this project shall comply with all requirements of State Water Resources Control Board [SWRCB] Order No. 99-08 and the Municipal Storm Water Permit, Order No. 2001-01 (NPDES General Permit No. CAS000002 and CA S0108758), Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity. In accordance with said permit, a Storm Water Pollution Prevention Plan [SWPPP] and a Monitoring Program Plan shall be implemented concurrently with the commencement of grading activities, and a Notice of Intent (NOI) shall be filed with the SWRCB.

A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received. In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 99-08 DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in Section C.7 of SWRCB Order No. 99-08 DWQ.

22. The Owner/Permittee shall construct a 26-foot wide standard driveway on Nancy Ridge Drive in conformance with all applicable City design requirements, standards, and guidelines. All work shall be completed and accepted by the City Engineer prior to open storage operations.

23. Fill placed in the Special Flood Hazard Area for the purpose of creating a building pad shall be compacted to 95 percent of the maximum density obtainable with the Standard Proctor Test Fill method issued by the American Society for Testing and

Materials (ASTM Standard D-698). Granular fill slopes shall have adequate protection for a minimum flood water velocity of 5 feet per second.

GEOLOGY REQUIREMENTS:

24. Additional geotechnical review will be required as part of the ministerial permit issuance process when a building or grading permit is required for this project.

LANDSCAPE REQUIREMENTS:

25. Landscape Construction Documents associated with grading, retaining walls, and building permits shall clearly demonstrate within the landscape scope of work, notes on plans, details, and/or landscape specifications that construction of retaining walls shall not exceed the limits of work as defined on Exhibit "A," Landscape Development Plan.

26. Landscape Construction Documents associated with grading, retaining walls, and building permits shall clearly demonstrate within the landscape scope of work and/or landscape specifications that planting which occurs in Brush Management Zone 2 and in the MHPA, as defined on Exhibit "A," Landscape Development Plan, shall be planted by hand, without the use of machinery. No mechanical or vehicular equipment shall be permitted.

27. Landscape Construction Documents associated with grading, retaining walls, and building permits shall clearly demonstrate within the landscape scope of work and/or landscape specifications that Brush Management Zone 2 shall be temporarily irrigated and shall consist of only above-ground piping as defined in the Land Development Manual: Landscape Standards. No trenching or mechanical equipment shall be permitted Brush Management Zone 2 and in the MHPA, as defined on Exhibit "A," Landscape Development Plan.

28. In the event that the Landscape Plan and the Site Plan conflict, the Site Plan shall be revised to be consistent with the Landscape Plan such that landscape areas are consistent with the Exhibit "A," Landscape Development Plan.

29. Prior to issuance of construction permits for grading, the Owner/Permittee or subsequent Owner shall submit landscape construction documents for the revegetation and hydro-seeding of all disturbed land in accordance with the Land Development Manual Landscape Standards and to the satisfaction of the City Manager. All plans shall be in substantial conformance to this permit (including Environmental conditions) and Exhibit "A."

30. Installation of slope planting and erosion control including seeding of all disturbed land (slopes and pads) consistent with the approved landscape and grading plans is considered to be in the public interest. The Permittee shall initiate such measures as soon as the grading and disturbance has been completed. Such erosion control/slope planting and the associated irrigation systems (temporary and/or permanent) and appurtenances shall be installed in accordance with the approved plans and the Land Development Manual: Landscape Standards.

31. The Owner/Permittee or subsequent Owner shall maintain all landscape in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted. The trees shall be maintained in a safe manner to allow each tree to grow to its mature height and spread.

32. The Owner/Permittee or subsequent Owner shall ensure that all proposed landscaping, especially landscaping adjacent to native habitat and/or MHPA, shall not include exotic plant species that may be invasive to native habitats. Plant species found within the California Invasive Plant Council's [Cal-IPC] Invasive Plant Inventory and the City of San Diego's Land Development Manual, Landscape Standards are prohibited.

33. Construction Documents for grading shall include the following note: "Installation of landscaping associated with these construction documents shall require a minimum short-term establishment period of 120 days for all native/naturalized slope restoration and a minimum long-term establishment/maintenance period of 25 months." Final approval of the required landscaping shall be to the satisfaction of the Mitigation Monitoring Coordination section of the Development Services Department.

BRUSH MANAGEMENT PROGRAM REQUIREMENTS:

34. The Owner/Permittee and/or any subsequent Owner shall implement the following requirements in accordance with the Brush Management Program shown on Exhibit "A," Brush Management Plan.

35. Prior to issuance of any construction permits for grading, retaining walls, or buildings, Landscape Construction Documents shall be submitted showing the brush management zones on the property in substantial conformance with Exhibit "A."

36. Prior to issuance of any construction permits for grading, retaining walls, or buildings, a complete set of Brush Management Construction Documents shall be submitted for approval to the City Manager and the Fire Marshall. The construction documents shall be in substantial conformance with Exhibit "A" and shall comply with the Uniform Fire Code, M.C. 55.0101; the Land Development Manual, Landscape Standards; and the Land Development Code, Landscape Regulations Section 142.0412 (Ordinance O-19413).

37. The Brush Management Program shall consist of two zones consistent with the Brush Management Regulations of the Land Development Code Section 142.0412 as follows: a standard Zone One of 35 feet and a standard Zone Two of 65 feet.

38. Within Zone One, combustible accessory structures (including, but not limited to decks, trellises, gazebos, etc.) shall not be permitted while non-combustible accessory structures may be approved within the designated Zone One area subject to written Fire Marshall and City Manager approval.

39. The following note shall be provided on the Brush Management Construction Documents: "It shall be the responsibility of the Permittee to schedule a pre-construction meeting on-site with the contractor and the Development Services Department to discuss and outline the implementation of the Brush Management Program."

40. In Zone One, plant material shall be selected to visually blend with the existing hillside vegetation. No invasive plant material shall be permitted as jointly determined by the Landscape Analysis Section [LAS] and the Environmental Analysis Section [EAS].

41. All new Zone Two planting shall be temporarily irrigated with an above-ground irrigation system until established. Zone Two shall be maintained on a regular basis by pruning and thinning plants, removing weeds, and maintaining the temporary irrigation system. Only native vegetation shall be planted or hydroseeded. If Zone Two is being revegetated, 50 percent of the planting area shall be seeded with material that does not grow taller than 24 inches.

42. Prior to final inspection, the approved Brush Management Program shall be implemented. The Brush Management Program shall be maintained at all times in accordance with the City of San Diego's *Land Development Manual*, *Landscape Standards*.

PLANNING/DESIGN REQUIREMENTS:

43. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

44. Other than the open storage use, as described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"], the Owner/Permittee and/or any subsequent Owner shall not be allowed to convert, change or modify to any other uses or development on the site unless appropriate application(s) or amendment(s) to this Permit have been granted.

45. No storage of hazardous waste chemicals or materials, petroleum products, or motor vehicles shall be allowed on site.

46. Outdoor storage of merchandise, material, and equipment shall be permitted on this site provided that the area is screened by a solid fence, wall or combination thereof, not less than 6'-0" in height and not greater than 12'-0" in height. No merchandise, material, or equipment shall exceed the height of the screening fence, wall or combination thereof. Fences and/or walls which exceed a height of 6'-0" shall obtain a building permit as required by the Municipal and Uniform Building Codes.

47. The Owner/Permittee shall take measures to ensure that water quality is not adversely affected by runoff containing fuel and lubricants or other pollutants.

48. Prior to issuance of any construction permits, the Owner/Permittee shall provide a Litter Control Program to ensure that the property is kept free of litter, satisfactory to the City Engineer

49. Prior to issuance of any construction permits, the Owner/Permittee shall execute a covenant of easement to be recorded against title to the affected premises, identified as all areas outside the development footprint, not including the conveyance of 8.02 acres for the MHPA, as shown on the approved Exhibit "A," Nancy Ridge Business Park, and executed in favor of the City. The covenant shall contain information as required by SDMC sections 143.0152(a) (1-4).

50. There shall be compliance with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as a condition of approval of this Permit. Where there is a conflict between a condition (including exhibits) of this Permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. Where a condition (including exhibits) of this Permit establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.

51. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

WASTEWATER REQUIREMENTS:

52. The open storage area shall not contain any habitable structure or trailer on the site. Any future habitable building structure on the site shall require the Owner/Permittee and/or subsequent owner to provide a sewer study and possible upgrade of offsite public sewer mains, acceptable to the Metropolitan Wastewater Department Director and satisfactory to the City Engineer.

WATER REQUIREMENTS:

53. Prior to the issuance of any construction permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of new water services, outside of any driveway or drive aisle and the removal of any existing unused water services within all rights-of-way adjacent to the project site, in a manner satisfactory to the Water Department Director and the City Engineer.

54. Prior to the issuance of any construction permits, the Owner/Permittee shall apply for a plumbing permit for the installation of appropriate private back flow prevention devices on each water service (domestic and irrigation), in a manner satisfactory to the Director of Public Utilities, the City Engineer and the Cross Connection Control Group in the Customer Support Division of the Water Department.

55. No approved improvements or landscaping, including private water facilities, grading and enhanced paving, shall be installed in or over any easement prior to the applicant obtaining an Encroachment Maintenance and Removal Agreement.
56. Prior to the issuance of any certificates of occupancy, the Owner/Permittee shall install additional fire hydrants, if needed, at locations satisfactory to the Fire Department and the City Engineer.
57. All on-site water facilities shall be private including domestic, fire and irrigation systems.
58. Prior to the issuance of any certificates of occupancy, public water facilities necessary to serve the development, including services and meters, shall be complete and operational in a manner satisfactory to the Director of Public Utilities and the City Engineer.
59. The Owner/Permittee agrees to design and construct all proposed public water facilities in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards and practices pertaining thereto. Water facilities as shown on the approved plans shall be modified at final engineering to comply with standards.

INFORMATION ONLY:

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code §66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Council of the City of San Diego on _____, by
Resolution No. R-_____.

AUTHENTICATED BY THE CITY MANAGER

By _____

The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

NANCY RIDGE BUSINESS PARK, LLC
Owner/Permittee

By _____

CARYON PROPERTIES, LLC
Owner/Permittee

By _____

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1180 et seq.**

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO CERTIFYING AND APPROVING MITIGATED NEGATIVE DECLARATION NO. 114358 AND ADOPTING THE MITIGATION, MONITORING, AND REPORTING PROGRAM FOR THE NANCY RIDGE BUSINESS PARK PROJECT.

WHEREAS, on October 11, 2006, Nancy Ridge Business Park, LLC., submitted an application to the City of San Diego for a Site Development Permit, Planned Development Permit, Multi-Habitat Planning Area boundary line adjustment, and Rezone for the Nancy Ridge Business Park project; and

WHEREAS, the matter was set for a public hearing to be conducted by the City Council of the City of San Diego; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter required the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the issue was heard by the City Council on _____; and

WHEREAS, the City Council of the City of San Diego considered the issues discussed in Mitigated Negative Declaration No. 114358; NOW THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that it is certified that Mitigated Negative Declaration No.114358 on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.) as amended, and the State guidelines thereto (California Administration Code Section 15000 et seq.), that the declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by the City Council in connection with the approval of a site development permit/planned development permit/multi-habitat planning area boundary line adjustment and rezone for the Nancy Ridge Business Park project.

BE IT FURTHER RESOLVED that the City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study to below a level of significance; therefore, Mitigated Negative Declaration No. 114358, a copy of which is attached hereto and incorporated by reference, is approved.

BE IT FURTHER RESOLVED that pursuant to California Public Resources Code, Section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto, as Exhibit A, and incorporated herein by reference.

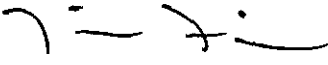
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(R-2009-295)

BE IT FURTHER RESOLVED, that the City Clerk is directed to file a Notice of Determination [NOD] with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Nina M. Fain
Deputy City Attorney

NMF:mm
10/03/08
Or.Dept:DSD
R-2009-295
MMS#6764

EXHIBIT A

MITIGATION MONITORING AND REPORTING PROGRAM

SITE DEVELOPMENT PERMIT, PLANNED DEVELOPMENT PERMIT, MULTI-HABITAT
PLANNING AREA BOUNDARY LINE ADJUSTMENT AND REZONE

PROJECT NO. 114358

This Mitigation Monitoring and Reporting Program is designed to ensure compliance with Public Resources Code Section 21081.6 during implementation of mitigation measures. This program identifies at a minimum: the department responsible for the monitoring, what is to be monitored, how the monitoring shall be accomplished, the monitoring and reporting schedule, and completion requirements. A record of the Mitigation Monitoring and Reporting Program will be maintained at the offices of the Entitlements Division, 1222 First Avenue, Fifth Floor, San Diego, CA 92101. All mitigation measures contained in the Mitigated Negative Declaration (Project No. 114358) shall be made conditions of the Site Development Permit, Planned Development Permit, Multi-Habitat Planning Area Boundary Line Adjustment and Rezone as may be further described below.

A. GENERAL

1. Prior to Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, the Assistant Deputy Director (ADD) of the Entitlements Division shall verify that the following statement is shown on the grading and/or construction plans as a note under the heading **ENVIRONMENTAL MITIGATION REQUIREMENTS**: *"The Nancy Ridge Business Park project is subject to a Mitigation Monitoring and Reporting Program and shall conform to the mitigation conditions as contained in the Mitigated Negative Declaration Project No. 114358."*
2. Prior to the commencement of work, a Preconstruction Meeting (Pre-con) shall be conducted and include City of San Diego's Mitigation Monitoring and Coordination (MMC) staff, Resident Engineer, Applicant, Project Paleontologist, Project Biologist, Environmental Consultants and other parties of interest.

B. LAND USE (MULTIPLE SPECIES CONSERVATION PROGRAM)**1. MHPA Boundary Line Adjustment**

- a. Prior to the recordation of the first final map and/or issuance of any grading permits, the on-site adjusted MHPA (8.02 acres total) shall be conveyed to the City's MSCP Preserve through either fee title to the City, or conservation easement or covenant of easement granted in favor of the City and wildlife agencies. Conveyance of any MHPA land in fee to the City shall require approval from the Park and Recreation Department Open Space Division Deputy Director

and shall exclude detention basins or other storm water control facilities, brush management areas, landscape/revegetation areas, and graded slopes.

2. Land Use Adjacency Guidelines

The Nancy Ridge Business Park project site is located within and adjacent to the MSCP Subarea Plan's Multi-Habitat Planning Area (MHPA). Therefore, the following MHPA Land Use Adjacency Guidelines shall be made conditions of project approval:

- a. Prior to initiation of any ground disturbing activities, the project biologist shall discuss the sensitive nature of the adjacent habitat with the crew and subcontractor.
- b. Prior to the start of construction, the construction limits shall be clearly delineated by a survey crew prior to brushing, clearing or grading. The limits of grading shall be defined with silt fencing and orange construction fencing, and checked by the biological monitor before initiation of trenching activities and/or ground disturbing activities.
- c. Prior to the issuance of any construction permit, the City Manager shall review the landscape plans to ensure that no invasive non-native plant species have been proposed for areas adjacent to the MHPA.
- d. All required temporary lighting, including security lighting of the staging areas, or permanent lighting adjacent to the MHPA shall be shielded, unidirectional, low pressure sodium illumination (or similar) and directed away from preserve areas using appropriate placement and shields.
- e. No staging/storage areas for equipment and materials shall be located within or adjacent to habitat retained in open space area. No equipment maintenance shall be conducted within or near the adjacent open space.
- f. The post-construction Best Management Practices are required to be consistent with the approved Water Quality Technical Report, to the satisfaction of the City Engineer. The project biologist shall oversee implementation of Best Management Practices as needed to prevent any significant sediment transport. Training of construction crews and field workers must be conducted to ensure that all conditions are met. All construction/grading plans shall be made available to crews in the field showing these conditions.
- g. No trash, oil, parking or other construction related activities shall be allowed outside the established limits of grading. All construction related debris shall be removed off-site to an approved disposal facility.
- h. No invasive, non-native plant species shall be permitted on-site. The hydroseed mix used for erosion control shall only contain native species and shall only be applied under the supervision of the biologist or a landscape architect.

- i. Appropriate barriers shall be provided along the MHPA boundaries to direct public access to appropriate locations and reduce domestic animal predation.
- j. No toxic materials or water used during construction related work shall be allowed to be diverted or drained off-site, into the MHPA, during and after construction activity. The biologist shall ensure that the appropriate measures and control devices are used as needed during construction to deter any drainage toward sensitive habitat.

3. Coastal California Gnatcatcher

- A. Prior to the issuance of any grading permit, the City Manager (or appointed designee) shall verify that the Multi-Habitat Planning Area (MHPA) boundaries and the following project requirements regarding the Coastal California Gnatcatcher are shown on the construction plans:

NO CLEARING, GRUBBING, GRADING, OR OTHER CONSTRUCTION ACTIVITIES SHALL OCCUR BETWEEN MARCH 1 AND AUGUST 15, THE BREEDING SEASON OF THE COASTAL CALIFORNIA GNATCATCHER, UNTIL THE FOLLOWING REQUIREMENTS HAVE BEEN MET TO THE SATISFACTION OF THE CITY MANAGER:

- 1. A QUALIFIED BIOLOGIST (POSSESSING A VALID ENDANGERED SPECIES ACT SECTION 10(a)(1)(A) RECOVERY PERMIT) SHALL SURVEY THOSE HABITAT AREAS WITHIN THE MHPA THAT WOULD BE SUBJECT TO CONSTRUCTION NOISE LEVELS EXCEEDING 60 DECIBELS [dB(A)] HOURLY AVERAGE FOR THE PRESENCE OF THE COASTAL CALIFORNIA GNATCATCHER. SURVEYS FOR THE COASTAL CALIFORNIA GNATCATCHER SHALL BE CONDUCTED PURSUANT TO THE PROTOCOL SURVEY GUIDELINES ESTABLISHED BY THE U.S. FISH AND WILDLIFE SERVICE WITHIN THE BREEDING SEASON PRIOR TO THE COMMENCEMENT OF ANY CONSTRUCTION. IF GNATCATCHERS ARE PRESENT, THEN THE FOLLOWING CONDITIONS MUST BE MET:
 - a. BETWEEN MARCH 1 AND AUGUST 15, NO CLEARING, GRUBBING, OR GRADING OF OCCUPIED GNATCATCHER HABITAT SHALL BE PERMITTED. AREAS RESTRICTED FROM SUCH ACTIVITIES SHALL BE STAKED OR FENCED UNDER THE SUPERVISION OF A QUALIFIED BIOLOGIST; AND
 - b. BETWEEN MARCH 1 AND AUGUST 15, NO CONSTRUCTION ACTIVITIES SHALL OCCUR WITHIN ANY PORTION OF THE SITE WHERE CONSTRUCTION ACTIVITIES WOULD RESULT IN NOISE

LEVELS EXCEEDING 60 dB(A) HOURLY AVERAGE AT THE EDGE OF OCCUPIED GNATCATCHER HABITAT. AN ANALYSIS SHOWING THAT NOISE GENERATED BY CONSTRUCTION ACTIVITIES WOULD NOT EXCEED 60 dB(A) HOURLY AVERAGE AT THE EDGE OF OCCUPIED HABITAT MUST BE COMPLETED. BY A QUALIFIED ACOUSTICIAN (POSSESSING CURRENT NOISE ENGINEER LICENSE OR REGISTRATION WITH MONITORING NOISE LEVEL EXPERIENCE WITH LISTED ANIMAL SPECIES) AND APPROVED BY THE CITY MANAGER AT LEAST TWO WEEKS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES DURING THE BREEDING SEASON, AREAS RESTRICTED FROM SUCH ACTIVITIES SHALL BE STAKED OR FENCED UNDER THE SUPERVISION OF A QUALIFIED BIOLOGIST; OR

- c. AT LEAST TWO WEEKS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES, UNDER THE DIRECTION OF A QUALIFIED ACOUSTICIAN, NOISE ATTENUATION MEASURES (e.g., BERMS, WALLS) SHALL BE IMPLEMENTED TO ENSURE THAT NOISE LEVELS RESULTING FROM CONSTRUCTION ACTIVITIES WILL NOT EXCEED 60 dB(A) HOURLY AVERAGE AT THE EDGE OF HABITAT OCCUPIED BY THE COASTAL CALIFORNIA GNATCATCHER. CONCURRENT WITH THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES AND THE CONSTRUCTION OF NECESSARY NOISE ATTENUATION FACILITIES, NOISE MONITORING* SHALL BE CONDUCTED AT THE EDGE OF THE OCCUPIED HABITAT AREA TO ENSURE THAT NOISE LEVELS DO NOT EXCEED 60 dB(A) HOURLY AVERAGE. IF THE NOISE ATTENUATION TECHNIQUES IMPLEMENTED ARE DETERMINED TO BE INADEQUATE BY THE QUALIFIED ACOUSTICIAN OR BIOLOGIST, THEN THE ASSOCIATED CONSTRUCTION ACTIVITIES SHALL CEASE UNTIL SUCH TIME THAT ADEQUATE NOISE ATTENUATION IS ACHIEVED OR UNTIL THE END OF THE BREEDING SEASON (AUGUST 16).

* Construction noise monitoring shall continue to be monitored at least twice weekly on varying days, or more frequently depending on the construction activity, to verify that noise levels at the edge of occupied habitat are maintained below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. If not, other measures shall be implemented in consultation with the biologist and the City Manager, as necessary, to reduce noise levels to below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average.

Such measures may include, but are not limited to, limitations on the placement of construction equipment and the simultaneous use of equipment.

2. IF COASTAL CALIFORNIA GNATCATCHERS ARE NOT DETECTED DURING THE PROTOCOL SURVEY, THE QUALIFIED BIOLOGIST SHALL SUBMIT SUBSTANTIAL EVIDENCE TO THE CITY MANAGER AND APPLICABLE RESOURCE AGENCIES WHICH DEMONSTRATES WHETHER OR NOT MITIGATION MEASURES SUCH AS NOISE WALLS ARE NECESSARY BETWEEN MARCH 1 AND AUGUST 15 AS FOLLOWS:

- a. IF THIS EVIDENCE INDICATES THE POTENTIAL IS HIGH FOR COASTAL CALIFORNIA GNATCATCHER TO BE PRESENT BASED ON HISTORICAL RECORDS OR SITE CONDITIONS, THEN CONDITION A.III SHALL BE ADHERED TO AS SPECIFIED ABOVE.
- b. IF THIS EVIDENCE CONCLUDES THAT NO IMPACTS TO THIS SPECIES ARE ANTICIPATED, NO MITIGATION MEASURES WOULD BE NECESSARY.

C. BIOLOGICAL RESOURCES

1. General:

- A. Prior to the issuance of any grading permits and/or the first pre-construction meeting, the owner/permittee shall submit evidence to the ADD of the Entitlements Division verifying that a qualified biologist has been retained to implement the biological resources mitigation program as detailed below (see 1 through 3):
 1. At least thirty days prior to the pre-construction meeting, a letter of verification shall be submitted to the MMC section which includes the name and contact information of the Biologist and the names of all persons involved in the Biological Monitoring of the project.
 2. At least thirty days prior to the pre-construction meeting, the qualified Biologist shall verify that any special reports, maps, plans and time lines, such as but not limited to, revegetation plans, plant relocation requirements and timing, avian or other wildlife protocol surveys, impact avoidance areas or other such information has been completed and updated.
 3. The qualified biologist (project biologist) shall attend the first preconstruction meeting.
- B. The project biologist shall supervise the placement of orange construction fencing or equivalent along the limits of disturbance within and surrounding sensitive habitats, as shown on the approved Exhibit A. In addition the biologist shall determine where silt fencing shall be installed, as appropriate
- C. All construction activities (including staging areas) shall be restricted to the development area, as shown on the approved Exhibit A. The project biologist

shall monitor construction activities as needed to ensure that construction activities do not encroach into biologically sensitive areas beyond the limits of disturbance, as shown on the approved Exhibit A.

- D. No grading or clearing activities shall occur within the area defined as Brush Management Zone (BMZ) II, as shown on the approved Exhibit A. Construction activities within BMZ II shall be restricted to hand crews for the purposes of brush zone management maintenance and landscape planting.

2. Mitigation for Potential Impacts to Sensitive Birds

Prior to the Issuance of Grading Permits:

- a. Prior to Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, the applicant shall provide a signed letter stating that no grading or any type of habitat destruction shall take place during the typical bird nesting season (February 1 -September 15) or;
- b. The applicant's project biologist shall perform a pre-grading/pre-construction directed survey/report for active nests within 3 days of grading/construction activities to the satisfaction of EAS. If active nests of species are detected the report shall include mitigation to the satisfaction of EAS and/or the USFWS and CDFG as follows:
- c. Prior to Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, a qualified biologist shall determine the presence or absence of active or occupied nests within the project site or area adjacent which could be impacted, with written results submitted to the Assistant Deputy Director (ADD) of the Entitlements Division.

Prior to Start of Construction:

- d. If active or occupied sensitive bird nests are identified during the pre-grading survey, or are otherwise noted during the week grading is to commence (see Item 3 below), and project construction has the potential to impact nests during the breeding season (February 1 - September 15), the biologist in consultation with EAS staff shall determine an appropriate buffer (i.e. per the ESL), around the bird nesting area which shall be free from grading or construction activity. The buffer area must be identified and flagged.
- e. These restrictions, as required, shall be noted on all grading and construction plans. If active or occupied nests to be protected are located on, or adjacent to the site, weekly biological monitoring of these nests shall be conducted by the project biologist during the breeding season (February 1 through September 15) with written results submitted to the ADD of the Entitlements Division. If no active or occupied nests are discovered on, or adjacent to the project site, no further mitigation is required.

During Construction:

- f. If active or occupied nests are discovered during construction activities, the biologist shall notify the Resident Engineer (RE) and Mitigation Monitoring and Coordination Staff (MMC).
- g. The RE shall stop work in the vicinity of the nests. The qualified biologist shall mark all pertinent trees, holes, or shrubs and delineate the appropriate "no construction" buffer area per City ESL and/or the USFWS/CDFG's direction, around any nest sites, satisfactory to the ADD of the Entitlements Division. The buffer shall be maintained until the qualified biologist determines, and demonstrates in a survey report satisfactory to the ADD of the Entitlements Division that any young birds have fledged.

Post Construction:

- h. The biologist shall be responsible for ensuring that all field notes and reports have been completed, all outstanding items of concern have been resolved or noted for follow up, and that focused surveys are completed, as appropriate.
- i. Within three months following the completion of monitoring, two copies of the Final Biological Monitoring Report (even if negative) and/or evaluation report, if applicable, which describes the results, analysis, and conclusions of the Biological Monitoring Program (with appropriate graphics) shall be submitted to Mitigation Monitoring Coordination (MMC) for approval by the ADD of LDR.
- j. For any unforeseen additional biological resources impacted during construction, the rehabilitation, revegetation, or other such follow up action plan(s) shall be included as part of the Final Biological Monitoring Report in accordance with the City of San Diego's Land Development Code, Biological Resources Guidelines (July 2002). Additional mitigation measures may also be required.
- k. This report shall address findings of active/inactive nests and any recommendations for retention of active nests, removal of inactive nests and mitigation for offsetting loss of breeding habitat.

MMC shall notify the RE of receipt of the Final Biological Monitoring Report.

D. PALEONTOLOGICAL RESOURCES**I. Prior to Permit Issuance****A. Entitlements Division Plan Check**

- 1. Prior to Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, but prior to the first preconstruction meeting, whichever is applicable, the Assistant Deputy Director (ADD) Environmental designee of the Entitlements Division shall verify that the requirements for Paleontological Monitoring have been noted on the appropriate construction documents.

B. Letters of Qualification have been submitted to ADD

1. The applicant shall submit a letter of verification to Mitigation Monitoring Coordination (MMC) identifying the Principal Investigator (PI) for the project and the names of all persons involved in the paleontological monitoring program, as defined in the City of San Diego Paleontology Guidelines.
2. MMC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the paleontological monitoring of the project.
3. Prior to the start of work, the applicant shall obtain approval from MMC for any personnel changes associated with the monitoring program.

II. Prior to Start of Construction

A. Verification of Records Search

1. The PI shall provide verification to MMC that a site specific records search has been completed. Verification includes, but is not limited to a copy of a confirmation letter from San Diego Natural History Museum, other institution or, if the search was in-house, a letter of verification from the PI stating that the search was completed.
2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.

B. PI Shall Attend Precon Meetings

1. Prior to beginning any work that requires monitoring, the Applicant shall arrange a Precon Meeting that shall include the PI, Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC. The qualified paleontologist shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Paleontological Monitoring program with the Construction Manager and/or Grading Contractor.
 - a. If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with MMC, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.
2. Identify Areas to be Monitored

Prior to the start of any work that requires monitoring, the PI shall submit a Paleontological Monitoring Exhibit (PME) based on the appropriate construction documents (reduced to 11x17) to MMC identifying the areas to be monitored including the delineation of grading/excavation limits. The PME shall be based

on the results of a site specific records search as well as information regarding existing known soil conditions (native or formation).

3. When Monitoring Will Occur

- a. Prior to the start of any work, the PI shall also submit a construction schedule to MMC through the RE indicating when and where monitoring will occur.
- b. The PI may submit a detailed letter to MMC prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate conditions such as depth of excavation and/or site graded to bedrock, presence or absence of fossil resources, etc., which may reduce or increase the potential for resources to be present.

III. During Construction

A. Monitor Shall be Present During Grading/Excavation/Trenching

1. The monitor shall be present full-time during grading/excavation/trenching activities as identified on the PME that could result in impacts to formations with high and moderate resource sensitivity. **The Construction Manager is responsible for notifying the RE, PI, and MMC of changes to any construction activities.**
2. The monitor shall document field activity via the Consultant Site Visit Record (CSVR). The CSVR's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (**Notification of Monitoring Completion**), and in the case of ANY discoveries. The RE shall forward copies to MMC.
3. The PI may submit a detailed letter to MMC during construction requesting a modification to the monitoring program when a field condition such as trenching activities that do not encounter formational soils as previously assumed, and/or when unique/unusual fossils are encountered, which may reduce or increase the potential for resources to be present.

B. Discovery Notification Process

1. In the event of a discovery, the Paleontological Monitor shall direct the contractor to temporarily divert trenching activities in the area of discovery and immediately notify the RE or BI, as appropriate.
2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery.

3. The PI shall immediately notify MMC by phone of the discovery, and shall also submit written documentation to MMC within 24 hours by fax or email with photos of the resource in context, if possible.

C. Determination of Significance

1. The PI shall evaluate the significance of the resource.
 - a. The PI shall immediately notify MMC by phone to discuss significance determination and shall also submit a letter to MMC indicating whether additional mitigation is required. The determination of significance for fossil discoveries shall be at the discretion of the PI.
 - b. If the resource is significant, the PI shall submit a Paleontological Recovery Program (PRP) and obtain written approval from MMC. Impacts to significant resources must be mitigated before ground disturbing activities in the area of discovery will be allowed to resume.
 - c. If resource is not significant (e.g., small pieces of broken common shell fragments or other scattered common fossils) the PI shall notify the RE, or BI as appropriate, that a non-significant discovery has been made. The Paleontologist shall continue to monitor the area without notification to MMC unless a significant resource is encountered.
 - d. The PI shall submit a letter to MMC indicating that fossil resources will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that no further work is required.

IV. Night and/or Weekend Work

A. If night and/or weekend work is included in the contract

1. When night and/or weekend work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting.
2. The following procedures shall be followed.
 - a. No Discoveries
In the event that no discoveries were encountered during night and/or weekend work, The PI shall record the information on the CSVr and submit to MMC via fax by 8AM on the next business day.
 - b. Discoveries
All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction.
 - c. Potentially Significant Discoveries

If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction shall be followed.

- d. The PI shall immediately contact MMC, or by 8AM on the next business day to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.
- B. If night work becomes necessary during the course of construction
 - 1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.
 - 2. The RE, or BI, as appropriate, shall notify MMC immediately.
- C. All other procedures described above shall apply, as appropriate.

V. Post Construction

A. Preparation and Submittal of Draft Monitoring Report

- 1. The PI shall submit two copies of the Draft Monitoring Report (even if negative), prepared in accordance with the Paleontological Guidelines which describes the results, analysis, and conclusions of all phases of the Paleontological Monitoring Program (with appropriate graphics) to MMC for review and approval within 90 days following the completion of monitoring,
 - a. For significant paleontological resources encountered during monitoring, the Paleontological Recovery Program shall be included in the Draft Monitoring Report.
 - b. Recording Sites with the San Diego Natural History Museum
The PI shall be responsible for recording (on the appropriate forms) any significant or potentially significant fossil resources encountered during the Paleontological Monitoring Program in accordance with the City's Paleontological Guidelines, and submittal of such forms to the San Diego Natural History Museum with the Final Monitoring Report.
- 2. MMC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.
- 3. The PI shall submit revised Draft Monitoring Report to MMC for approval.
- 4. MMC shall provide written verification to the PI of the approved report.
- 5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.

B. Handling of Fossil Remains

1. The PI shall be responsible for ensuring that all fossil remains collected are cleaned and catalogued.
2. The PI shall be responsible for ensuring that all fossil remains are analyzed to identify function and chronology as they relate to the geologic history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate

C. Curation of fossil remains: Deed of Gift and Acceptance Verification

1. The PI shall be responsible for ensuring that all fossil remains associated with the monitoring for this project are permanently curated with an appropriate institution.
2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and MMC.

D. Final Monitoring Report(s)

1. The PI shall submit two copies of the Final Monitoring Report to MMC (even if negative), within 90 days after notification from MMC that the draft report has been approved.
2. The RE shall, in no case, issue the Notice of Completion until receiving a copy of the approved Final Monitoring Report from MMC which includes the Acceptance Verification from the curation institution.

The above mitigation monitoring and reporting program will require additional fees and/or deposits to be collected prior to the issuance of building permits, certificates of occupancy and/or final maps to ensure the successful completion of the monitoring program.